THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5701 of 2007

03.4.2007

Between:

G.Sreenivasulu, S/o.G.Krishnappa Chetty
And others

… Petitioners

AND

The Principal Secretary to Government of Andhra Pradesh,
Panchayat Raj & Rural Development Department, Secretariat,
Hyderabad
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5701 of 2007

ORDER:

The first petition is Upa-sarpanch and petitioners 2 to 7 are the ward members of Kanipakam Gram Panchayat. They filed the instant writ petition seeking a writ of Mandamus declaring the action of the third respondent in not fixing upset price for conducting public auction to collect parking fee in the lands belonging to Kanipakam Gram Panchayat.

The brief fact of the matter is that Kanipakam Gram Panchayat is collecting parking fee from 1996 in respect of certain areas belonging to it. As per the procedure every year the third respondent has to fix upset price. Accordingly for conducting auction for the year2007-2008, the Gram Panchayat submitted a copy of the resolution No.28, dated 20.1.2007 requesting the third respondent to fix upset price. Instead of fixing upset price, the third respondent sent a communication, dated 08.2.2007, to the Mandal Development Officer to obtain the opinion of the Government Pleader having regard to the order of this Court in favour of Sri Varasiddhi Vinayaka Swamy Temple (Kanipakam temple). In response thereto, it is alleged that the sarpanch sent a detailed letter clarifying that the auction proposed by the Gram Panchayat does not in any way relate to the area in respect of which Kanipakam temple conducted public auction. The petitioners allege that in spite of the same, third respondent failed to fix the upset price. A reference is also made to the order of this Court in W.P.No.19531 of 2004 dated 18.7.2006. The said writ petition was filed by the fourth respondent Gram Panchayat seeking invalidation of the auction notice dated 15.10.2005 issued by Kanipakam temple. The claim of the

Gram Panchayat in respect of the land in survey Nos.1/13 to 1/16, 1/16A and 2/2 situated at Punyasamudram village in respect of which auction was proposed by Kanipakam temple, was rejected by this Court. In view of this, the petitioners contend that the Gram Panchayat passed resolution proposing to conduct auction in respect of other pieces of lands situated in Kanipakam Gram Panchayat.

At the stage of admission itself, third respondent filed counter affidavit. While admitting the receipt of the requisition from the Gram Panchayat it is stated that having regard to the orders of this Court in W.P.No.19531 of 2004, the matter was referred to Mandal Development Officer and as the petitioners did not submit other details of the lands, the upset price could not be fixed. A reference is also made to the Rules relating to public halting places, cart stands (promulgated vide G.O.Ms. No.67, dated 07.2.1996), in respect of the contention that the Gram Panchayat did not make any application to the District Collector as required.

Learned Counsel for the petitioners has invited the attention of this Court to a communication dated 08.3.2007 sent by the Sarpanch of the fourth respondent to the third respondent, a copy of which was also marked to the District Collector and District Panchayat Officer. He submits that the Gram Panchayat has submitted particulars of pieces of lands where the parking has to be provided by conducting auction and, therefore, the third respondent cannot withhold the fixation of upset price. Learned Government Pleader submits that if all the details required for fixation of upset price are received by the third respondent, necessary action would be taken in due course of time.

When Kanipakam temple issued auction notice dated 15.10.2004 proposing to conduct auction of parking lot in the land admeasuring Acs.2.35 situated at Punyasamudram village, Kanipakam Gram Panchayat, the fourth respondent herein challenged the same *inter alia* on the ground that Kanipakam temple does not own any land for providing parking space and that the temple established parking stand is contrary to the Rules made in G.O.Ms.No.67, dated 07.2.1996. This Court rejected the said contention and recorded a finding as under.

> A perusal of the report would disclose that on question No.1, the Advocate Commissioner reported that the land in an extent of Acs.2.35 cents in Sy.Nos.1/13 to 1/16, 1/16A and 2/2, is situated in Punya Samudram village, which borders Kanipakam Gram Panchayat; that the respondent developed the said land as parking lot, and that except one canteen, which is situated in Kanipalam Gram Panchayat limits, the entire land developed by the respondent as parking lot, also has a provision for ten drinking water taps and bathrooms,

> and that they are all situated in Punya Samudram Village; and that the respondent at the time of inspection had submitted a certificate issued by the Mandal Revenue Officer, Thavanampalli, stating that the parking lot in Sy.No.2/2 in an extent of 0.91 cents in Punya Samudram village, developed by the Temple, was handed over to it and that the Temple erected fencing wire around the land and farmed an entry road to the car parking place from Kanipakam Main Road. Thus, the report reveals that the land developed by the respondent as parking lot does not fall within the jurisdiction of the petitioner-Gram Panchayat.

In this case, the petitioners who are ward members do not dispute the above position. According to them Gram Panchayat never conducted any action in respect of the land which is claimed by Kanipakam Temple but for the last ten years auction is being conducted in certain areas which were vacant lands within the jurisdiction of the Gram Panchayat. In support of the same, they also placed reliance on the communication dated 08.3.2007 by the Sarpanch to the Divisional Panchayat Officer, pointing out the land admeasuring Acs.0.50 in survey No.308 and also five other pieces of lands. Therefore, the Divisional Panchayat Officer may obtain further information regarding the auction amounts collected by the Gram Panchayat during the last ten years and based on which figures, upset price may be fixed according to law. This exercise may be completed within a period of ten days from the date of receipt of a copy of this order. This Court makes it clear that this order shall not be construed as empowering Gram Panchayat to conduct auction for parking lot, which does not specifically vest in them.

The writ petition, with the above observations, is accordingly disposed of. No costs.

_____

(**V.V.S.RAO, J**)

April 03, 2007.

NOTE:

Issue order copy by

04.4.2007.

(By order)

YS